IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.13 OF 2016

Shri. Harilal Khurdhan Ram
An Adult, Aged 56 years, Occ.: LIC Agent,
Resident of MMRDA Colony,
Bldg. No. A/5, Room No. 303.
(Kokari Agar), Sion Koliwada,
Mumbai – 400 037 .... Applicant
(Ori. Complainant)

Vs.

1 Shri. Murlidhar Gamaprasad
Resident of GNM/B/21, Naik Nagar,
Behind Hanuman Temple,
Sion, Agra Road,
Mumbai – 400 022 .... Respondent no.1
(Original accused)

2 The State of Maharashtra
through Ld. Public Prosecutor,
High Court, Mumbai .... Respondent no.2

Mr. Annu K. Moily for the Applicant.
Mr. Jatin P. Shah a/w Ms. Snehankita M. Munj and Ms. Zarna K. Shah for Respondent no.1.
Mr. S.S. Pednekar APP for the State – Respondent no.2

Coram : Smt. Sadhana S. Jadhav, J.
Date : 21st January 2019

JUDGMENT :

1 Heard the learned counsel for the applicant, respondent no. 1 and the learned APP.

2 This is an application seeking leave to appeal challenging the judgment and order dated 24th November 2015 in CC No. 3001092/SS/2015 thereby acquitting respondent no.1 for the offence punishable under Section 138 of Negotiable Instruments Act.

3 The facts of the applicant's case in nutshell are as follows :

The applicant/original complainant herein happens to be an LIC Agent. According to the applicant, respondent no.1 herein had issued a cheque in favour of the applicant on 20th February 2010 for an amount of Rs.2,40,000/-. The number of the cheque is **169764**. It is the case of the prosecution that one Rameshkumar Jaiswar had introduced respondent no.1 to him as respondent no.1 wanted to draw a Life Insurance policy. That they had developed cordial relations. The Respondent no.1 had also issued a cheque to him for drawing a policy. The number of the said cheque is 169764. It is a cancelled cheque and is at Exhibit '22' in the proceedings of the trial Court. That the premiums were to be deducted from the salary of respondent no.1/ accused, however, at the last moment, the accused had not submitted his salary documents or any other requisite documents and therefore, the policy could not be drawn. According to the complainant since they have developed friendly relations, the accused used to visit the complainant intermittently. On one occasion, he had disclosed that he has to undergo angiography and therefore had demanded money. The applicant had given an amount of Rs.40,000/-. Thereafter, the applicant had demanded money on 3 to 4 occasions and he had extended hand-loan to the accused for the purpose of medical expenditure. However, subsequently he had realised that the accused was not ill and that he has been cheated and therefore, he had demanded the amount, which was extended to him by hand-loan. At that stage, the accused had given him the cheque. On presentation, the said cheque was dishonoured. Hence, the applicant/complainant had issued a notice on 3rd August 2010 stating therein that he had advanced hand-loan to the accused to meet his personal requirement, against which a cheque bearing number 169764 had been advanced to him for an amount of Rs.2,40,000/-. That cheque has been dishonoured with a remark "less balance".

4 It is pertinent to note that in the said notice, it has not been stated as to what was the amount of the loan that was extended at different stages or the dates on which the loan was advanced to the accused. The accused had replied the said notice on 26th August 2010 and it was clarified that in fact the cheque was issued towards the LIC policy but subject to finalisation only after consultation with his family members. That an endorsement of "cancelled" was also made by the applicant on photocopy of the cheque. The accused had taken the photocopy of the blank signed original cheque, which was handed over to the complainant. It is also stated that the complainant had mentioned the name of the payee of the cheque in his own handwriting. That thereafter the accused had cancelled the idea of drawing the insurance policy and had demanded the cheque.

However, he was informed by the applicant/complainant that the cheque was not traceable. The accused had also informed the applicant that he should put an endorsement of cancelled on the original cheque. However, he had refused to do the same. It was clear that the said cheque was forged after it was issued. The accused had also warned the applicant that he would initiate legal proceedings against the applicant for the offence of cheating and forgery punishable under Sections 420, 461, 467 and 471 of Indian Penal Code. The reply dated 26th August 2010 was further replied by the applicant by letter dated 2nd September 2010 and he had replied that upon demand of money, he was threatened by the accused and therefore the applicant had also lodged a complaint with Antop Hill police station. It appears that although the complaint was lodged, the accused was never summoned by the police. It was alleged that the accused is having contacts in the police department. It was specifically stated by the applicant that the amount was given to the accused after it was withdrawn from his bank account. It is pertinent to note that in the second reply also, the applicant had not stated as to the particulars of the dates and the amounts advanced to the accused.

5 He had filed the complaint, which was registered and later on renumbered as CC No.3001092/SS/2015. The applicant had filed an affidavit of evidence. In the affidavit of evidence, he has initially mentioned about the period when he was about to draw the LIC policy. It is stated that on 23rd June 2008, the accused had requested him to advance an amount of Rs.40,000/-, which was paid to him by cash. On 27th June 2008, he had advanced a loan of Rs.50,000/-. On 2nd July 2008, another Rs.50,000/- was given to the accused and thereafter on 8th July 2008, he had advanced an amount of Rs.50,000/-. According to him, all amount was withdrawn from the savings bank operated and maintained in Union Bank of India, Sion Branch. The total amount mentioned in the affidavit of evidence is Rs.1,90,000/- and there was a demand of Rs.2,40,000/- and according to the complainant, the accused had issued a cheque of Rs.2,40,000/-, which was dishonoured on 19th July 2010. The applicant was cross-examined. He was asked as to whether

Rameshkumar Jaiswar had filed a complaint against him with the Life Insurance Corporation alleging therein that although the cash amount was taken from him towards premium, the same was not deposited with LIC and that the policy had been lapsed. The cross-examination was deferred on the ground that the accused wanted to issue notice to the applicant to produce certain documents. The documents included a Form issued by the LIC of India, a copy of the cheque bearing number 169764 drawn on Post Office Savings Bank, Mumbai, G.P.O. with the original acknowledgment and statement of account with respect to operation of ATM card of Union Bank of India pertaining to the complainant. The applicant was confronted with the said documents. He admitted that Rameshkumar Jaiswar had filed a complaint against him and that the LIC after the detailed enquiry had demoted him. He had admitted that he has not challenged the order of demotion. Thereafter the applicant had placed on record a copy of the Ekrar Nama dated 8th July 2008. The Court had questioned as to why the original was not filed and then the explanation that was given by the applicant was that the accused had taken the original documents for preparing affidavit attestation, he had handed over the photocopy of the same. He was also confronted with the issue that there is variance in the amount, which was given by advance loan of amount mentioned on the cheque. The explanation given by the applicant was that his lawyer had inadvertently not mentioned the last figure of Rs.50,000/-. He has also admitted that he had no occasion to go to Allahabad in the month of June 2008. It is also admitted that the said ATM card was used at Allahabad on 27th July 2008 for withdrawal of Rs.10,000/- and Rs.15,000/-. The compilation of exhibits, evidence including the list of documents filed by the accused is taken on record and marked Article "X" for identification.

6 It is further pertinent to note that the complainant had examined Rameshkumar Jaiswar, who has categorically admitted that he had filed a complaint against the applicant as he was cheated and his policy had lapsed.

7 The accused has examined Sonali Patwa as defence witness. She is working as a Manager with the LIC. She has proved the show cause notice dated 25th June 2011 issued to the applicant. The order was passed on 13th August 2011, by which the applicant was demoted. The typographical errors were corrected subsequently. She has admitted in the cross-examination that the documents produced are in relation to the enquiry of the complainant, which was initiated on the basis of the complaint made by Rameshkumar Jaiswar against the complainant i.e. the present applicant. That the disciplinary authority had conducted the enquiry in a proper manner. It is also admitted that the amounts against the entries at 5, 6, 7, 9 and 11 were not recorded in the account of policy, during enquiry the complainant i.e. Rameshkumar Jaiswar has submitted some letters before the disciplinary authority.

8 It is apparent on the face of the record that the learned Judge has recorded findings in consonance with the facts on record and has appreciated the documents as well as the evidence in accordance with law. It is also apparent on the face of record that it is not the respondent no.1, but it is the applicant/complainant, who has cheated the present respondent no.1. The fact that the cheque

issued towards the LIC and the cheque presented by the applicant for encashment are one and the same. The cheque number of both cheques is 169764. It was fortunate that the accused/respondent no.1 had drawn a photocopy of the cheque prior to submitting the same for the purpose of drawing the LIC policy. Moreover, the learned Judge has rightly appreciated the evidence and observed that there was parallel withdrawal from his bank account on the same day on 26th July 2008 at Mumbai as well as from ATM at Allahabad and the explanation offered by the applicant that his son is studying in Allahabad and had withdrawn the amount at Allahabad.

9 Learned counsel for the applicant has also stated that the applicant has been falsely implicated by Rameshkumar Jaiswar. However, the said submission holds no ground as, in that eventuality, the complainant would not have examined Rameshkumar Jaiswar as his witness. The said witness has also admitted that he had been cheated by the applicant. It is also pertinent to note that a blank cheque was issued to the applicant in favour of LIC and the same was misused by the applicant to his own

benefit. Moreover, in the course of trial, he had also filed a fabricated document termed as 'Ekrar Nama' showing that the accused-respondent no.1 had agreed to repay the said amount i.e.Rs.2,40,000/-. The applicant had forged the signature of the complainant on the said documents. It was on the basis of these forged and fabricated documents that the criminal case was initiated against the present respondent no.1 who had to undergo an Ordeal of the trial almost for a span of ten years. The evidence on record speaks for itself. In fact the accused-respondent no. 1 had also warned the applicant/complainant that he would initiate prosecution against the complainant. However, since the applicant had initiated criminal proceedings against respondent no.1 under Section 138 of Negotiable Instruments Act, he had not taken any steps.

10 An institution like LIC of India has also been cheated by the applicant/original complainant. In fact the relation between the LIC and the insured is one of faith and trust and in the eventuality that such Agents are engaged by the said Corporation, the people would be hesitant to continue with their policies with LIC of India.

11 Learned counsel for the applicant, upon instructions from the applicant, who is present in the Court has submitted that he still continues his service with LIC of India, which is very unfortunate. It is, in these circumstances that the LIC should immediately suspend the services of such Agents. Moreover, it is pertinent to note that this is not a first occasion when the applicant/complainant has indulged into such malafide practices.

12 The Life Insurance Corporation of India was also apprised by Rameshkumar Jaiswar about the malafide practices of the applicant and he was only demoted.

13 At this stage also, the LIC of India or the accused-respondent no.1 would reserve their rights to initiate the criminal proceedings against the applicant for forgery and fabrication of documents. Since the respondent no.1 had to go through the trauma/ordeal of the criminal prosecution for a period of ten years, the application seeking leave to appeal is dismissed with costs.

14 The applicant shall pay Rs.25,000/- to respondent no.1 The amount is to be deposited in this Court within eight weeks from today.

15 The accused-respondent no. 1 would be at liberty to file an application seeking withdrawal of the said amount.

16 With these observations, the application stands dismissed with costs.

17 A copy of this judgment and order should be forwarded to the Registered office of Life Insurance Corporation of India and the Branch Office, Branch No.897, Dadar, Mumbai Divisional Office-II, where the applicant-Harilal Khurdhan Ram (Agent Code No.00668877) is attached.

(*Smt. Sadhana S. Jadhav,* J)