IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-14981-2017 (O&M)
Date of decision: 14.11.2019

Hanumant Singh Raghav

….Petitioner

Versus

Rajinder Kumar

….Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. B.D. Sharma, Advocate
for the respondent.

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ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the criminal complaint No.COMI/127/2014 dated 09.11.2012 titled as Rajinder Vs. Regional Manager, ICICI Lombard General Insurance Company and others (Annexure P-9) and the summoning order dated 13.06.2016 (Annexure P-10), vide which the petitioner had been summoned to face the trial under Sections 167, 209, 219, 420, 467, 468, 471 of the Indian Penal Code (for short 'IPC').

Learned counsel for the petitioner submits that the relevant facts for just decision of the case are that one Jagga Singh met with an accident on

14.08.2007 with the car of respondent-complainant Rajinder Kumar and on that account, FIR No.34 dated 19.09.2007 was registered. Later on, Jagga Singh filed a claim petition before the Motor Accident Claims Tribunal, Sirsa (for short 'MACT'), in which ICICI Lombard General Insurance Company was arrayed as respondent No.2 and owner of the car/respondent-complainant Rajinder Kumar was arrayed as respondent No.1. The said MACT case No.75/2007 was decided ex-parte against respondent-complainant, as despite repeated service through ordinary process and registered post, he could not be served and ultimately, on receiving the report that he is avoiding the service, the complainant was proceeded against ex-parte on 31.08.2008 by the MACT, Sirsa. Thereafter, the case was referred to the Lok Adalat, where a settlement was arrived at between Jagga Singh and Insurance Company and in pursuance to the settlement, award dated 22.11.2008 was passed. The operative part of the award reads as under:-

> *"In view of the settlement arrived at before the Lok Adalat, I hereby award a compensation of Rs.1,15,000/- in favour of the petitioner, which shall be deposited by respondent no.2 within two months from today, failing which the claimant will be entitled to realize the same with interest @7-1/2% per annum from the date of award till realization and the payment subject to realization of D/L. It is directed that the amount on realization shall be disbursed to the petitioner in cash against proper receipt and identification. Parties are left to bear their own costs. Memo of costs be prepared and file be consigned to record*

room."

Learned counsel for the petitioner has further submitted that later on, an application was moved for correction, which was also allowed. As per the award, ICICI Lombard General Insurance Company was to pay an amount of Rs.1.15 lac to claimant Jagga Singh. Thereafter, the Insurance Company got verification of the driving licence of respondent-complainant Rajinder Kumar, in which the Licensing Authority, Sri Muktsar Sahib gave information to ICICI Lombard General Insurance Company on 24.11.2008 that the licence in the name of complainant was valid upto 05.01.2001.

Learned counsel for the petitioner further submits that when the execution was filed on 09.01.2010, the executing Court passed an order that the Insurance Company/JD No.2 will pay the amount to claimant Jagga Singh with a right to recover the same from Rajinder Kumar-respondent-JD No.1. It is further submitted that thereafter, the amount was paid by the Insurance Company and on coming to know about the proceedings, the respondent-complainant filed the impugned criminal complaint against six persons, in which Regional Manager, ICICI Lombard General Insurance Company was arrayed as accused No.1, Area Manager, ICICI Lombard General Insurance Company, Sirsa was arrayed as accused No.2, Santosh Rani was arrayed as accused No.3, ICICI Lombard General Insurance Company, Ludhiana was arrayed as accused No.4, Jagga Singh was arrayed as accused No.5 and Neeraj Kumar, Clerk, Office of DTO, Sri Muktsar Sahib was arrayed as accused No.6 and in this complaint, the petitioner was never arrayed as an accused and there was a passing reference in its para No.2 that the petitioner, being Advocate, who was representing Jagga Singh, had applied for transfer of decree to MACT, Sri Muktsar Sahib and when the verification was done regarding the driving licence of the complainant, petitioner Hanumant Singh Raghav got the verification done from the DTO, Sri Muktsar Sahib and had paid the huge amount of Rs.50,000/-.

Learned counsel has next submitted that while passing the impugned summoning order, the trial Court has observed as under: -

> *"...The main allegation of the complainant in the present case are that the accused has succeeded in preparing a false document under the heading of ICICI Lombard General Insurance dated 24.11.2008 which got signed by DTO, Muktsar on dated 25.11.2008 in which District Transport Officer has mentioned that the driving licence bearing No.9569 was not a valid license at the time of accident. This document prepared by above mentioned accused persons especially official of office of District Transport Office, Clerk Neeraj Kumar has prepared this forged document in connivance with Jagga Singh, Santosh Rani, Jagdev Singh, Charanjit Singh Sarpanch Chauntra, Sham Lal MD PUDA, Gurpreet Singh son of Banta Singh of Village Mallan now at Sri Muktsar Sahib, Hanumant Singh Raghav Advocate of Sirsa, Vivek Tikkoo, Regional Manager, ICICI Sirsa. For doing this false verification District Transport Office Clerk Neeraj Kumar got a huge amount of Rs.50,000/- in front of Subash Chander and Amrik Singh Madrassa and Sukhwinder*

Singh Middha from the accused person. This document was got prepared by the all accused persons with the assistance of Public Servants in order to get a false decree against the complainant. However this court is of the considered opinion that the allegations of the complainant are overall concerning the document i.e. the report with regard to driving licence in which it has been said that the same was not valid on the date when the alleged accident took place. It is due to this report the Court issued the precept for the satisfaction of the execution in the Court of ld. Additional District Judge, Sri Muktsar Sahib. In the present complaint the complainant has narrated two different set of circumstances. However this court is of the considered opinion that since the accused Santosh Rani, Jagga Singh was nothing to gain out of it, as their claim with regard to accident was already meted out by the Insurance Company, the other accused namely, Jagdev Singh, Balwinder Singh, Charanjit Singh Sarpanch Chauntra, Sham Lal MD PUDA, Gurpreet Singh son of Banta Singh of village Mallan also have no role to play as they were not to get anything out of it. The complainant might have moved proper application before the concerned authorities, and the court which had issued the precept on the application of accused. The complainant could have asked the court to correct its order with regard to issuance of precept. Therefore the allegations with regard to extortion do *not appeal to this court and therefore do not inspire confidence in the mind of the court. Accordingly there is no order as to these accused, however since the Insurance Company i.e. ICICI Lombard, has presented its case before the Ld. Motor Accident Claim Tribunal, that the complainant was not having a valid driving licence on the date of alleged accident, for which as per practice prevalent the Insurance Company in order to avoid its liability had handed over the document i.e. its letter pad to the Surveyor, who in connivance with all the concerned officials have obtained a false report whereby it was reported that the said driving licence was not valid on the said date, and therefore the Insurance Company was able to avoid its liability to pay the claim to the claimant. Prima facie all the persons like the Regional Manager Vivek Tikkoo, Hanumant Singh Raghav Advocate, and Neeraj Kumar Clerk, office of District Transport Office seems to have been connived with each other to obtain this false report in order to get an order passed by the court which it may not have passed in case a proper and valid report was placed before it.*

Accordingly, let the accused mentioned above be summoned to face trial under Sections 167, 209, 219, 420, 467, 468 and 471 IPC. There is no order of summoning with regard to remaining accused except accused Advocate Hanumant Singh Raghav, the then Regional Manager ICICI Lombard Vivek

Tikkoo, and Neeraj Kumar, Clerk office of District Transport Office, Sri Muktsar Sahib.

Let these accused be summoned on filing PF and copies of complaint within seven days for 28.7.2016...”

Learned counsel for the petitioner has further argued that without there being any allegation against the petitioner, he has been summoned to face the trial. It is next argued that the petitioner had no role in verification of the driving licence of the complainant, as the Insurance Company has its own panel Advocates and it was done at their own level and the petitioner was only representing the decree holder Jagga Singh. It is also submitted that even the complainant never filed any appeal/revision against the order dated 09.01.2010 passed by MACT, Sirsa and in the execution proceedings, when the recovery right was given against him, a power, which was exercised by the executing Court beyond the scope of decree i.e. MACT award, wherein no such condition was imposed, as it was an award passed by the Lok Adalat and was not challenged before any Court. It is thus submitted that the complainant had a right to challenge the order dated 09.01.2010, as a condition was imposed, which was beyond the scope of Lok Adalat/MACT award, as no recovery right was given, which, for the first time, was given in the execution proceedings by extending scope of execution beyond its jurisdiction.

Learned counsel for the petitioner has further argued that there is nothing on record that the petitioner had any role in verification of the aforesaid driving licence, as the complainant never arrayed him as an accused and though in the complaint, it is stated that the petitioner had given

Rs.50,000/- for false verification of the licence from the concerned Clerk Neeraj Kumar, office of DTO, Sri Muktsar Sahib. It is further argued that Jagga Singh was given an award of Rs.1.15 lac only and it is a fake allegation that out of the said amount, an amount of Rs.50,000/- was paid to the Clerk, office of DTO, Sri Muktsar Sahib to obtain a false certificate, as in the absence of any such verification, the complainant was to get the said decretal amount from the Insurance Company and therefore, mischief, if any, was played by the ICICI Lombard General Insurance Company only. It is thus argued that the trial Court has not followed the proper procedure, as a person, who is not arrayed as an accused, has been summoned, without there being any evidence against him and in the capacity of an Advocate, he was providing legal services to victim Jagga Singh.

In reply, learned counsel for the respondent has argued that the petitioner had connived with other accused persons in procuring the false verification report regarding driving licence, which was valid on the date, as it has come in the statement of CW1 Mahesh Kumar, Junior Assistant, office of DTO, Sri Muktsar Sahib that the driving licence of the complainant was valid upto 05.01.2001 and it was then extended upto 14.12.2008.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

(a) The petitioner, being an Advocate, had filed a MACT case, in which the complainant despite the efforts made by the MACT, Sirsa, was not served and finding that he is avoiding the service, he was proceeded against ex-parte. The complainant never challenged those ex-parte proceedings before any competent Court of law.

(b) The matter was compromised before the Lok Adalat and insurer of car of the complainant i.e. ICICI Lombard General Insurance Company agreed to pay the compensation of Rs.1.15 lac to claimant Jagga Singh.

(c) While passing the award by the Lok Adalat, no recovery rights were given to the Insurance Company except that the payment is to be made subject to verification of the driving licence.

(d) When the execution application was filed, the complainant was again proceeded against ex-parte and the executing Court, over and above the award of MACT/Lok Adalat, granted recovery right to the Insurance Company from owner of the insured car i.e. complainant Rajinder Kumar vide order dated 09.01.2010 and this order was never challenged before the revisional Court that it was beyond the jurisdiction of the executing Court.

(e) When the proceedings of recovery were sent to MACT, Sri Muktsar Sahib, the complainant filed the impugned complaint, in which six persons were arrayed as accused (petitioner was not arrayed as an accused). There is no direct allegation against the petitioner of manipulating in the report from the DTO, Sri Muktsar Sahib that driving licence of the complainant has expired on the date of accident, though later on it was found to be renewed.

(f) A perusal of the order dated 23.09.2011 shows that when an application was moved by the Insurance Company to recover the amount from the complainant, the same was withdrawn from the MACT, Sirsa on 10.04.2010 and then an application was filed for transfer of the execution application to the Court of learned District Judge, Sri Muktsar Sahib for effecting the recovery. Later on, the said execution application was dismissed for non-prosecution and was not restored, as admitted by learned counsel for the respondent-complainant and therefore, no loss is caused to the complainant.

(g) A perusal of the written statement (Annexure P-1) shows that all the facts stated in the complaint have not been specifically denied except that the petitioner, in connivance with the accused persons, had obtained the false verification report from the office of DTO, Sri Muktsar Sahib on 25.11.2008 and therefore, in the absence of any specific allegation, prosecution of the petitioner is not sustainable.

(h) Even the trial Court has not adopted the proper procedure, as it had issued the summoning order against a person, who was not arrayed as an accused, by making an observation that the petitioner seems to have been connived with other accused persons.

For the reasons recorded above, this petition is allowed. Impugned criminal complaint No.COMI/127/2014 dated 09.11.2012 titled as

Rajinder Vs. Regional Manager, ICICI Lombard General Insurance Company and others (Annexure P-9) and the summoning order dated 13.06.2016 (Annexure P-10) are quashed.

[ARVIND SINGH SANGWAN]
JUDGE

14.11.2019
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No