IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30485 of 2023

Arising Out of PS. Case No.-7984 Year-2022 Thana- PATNA COMPLAINT CASE District-Patna

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Anup Rau Velamuri, Managing Director And Chief Executive Officer (DIN 06511806) Son of Mr. Velamuri Ramakrishna Rau R/o Bungalows No. 9 and 10, Golden Lawns CHS, V.N. Purav Marg off Sion Trombay Rd., Opp. BARC Gate No. 6, Mankhurd, Mumbai -400088, Maharashtra

... ... Petitioner

Versus

1. The State of Bihar
2. Kundan Singh Son of Late Kamakhya Narayan Singh R/o Flat no. 505, Sigma C Sahara City, Mango, Purbi, Singhbhum, Jharkhand, presently residing at Flat No. 406, Raj Ballav Kunj Apartment, CDA colony Raj Banshi Nagar, P.S. - Shastri Nagar, Patna

... ... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. P. N. Shahi, Sr. Advocate
		Mr. Dayanand Singh, Advocate
		Mr. Dhananjay Kashyap, Advocate
For the State	:	Mr. Jharkhandi Upadhaya, APP
For the Opposite Party No.2	:	Mr. Satyabir Bharti, Advocate
		Ms. Kanupriya, Advocate
		Mr. Abhishek Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 23-07-2024

Heard learned counsel appearing for the respective parties.

2. The present application has been filed for quashing the order dated 24.03.2023 passed by learned Judicial Magistrate 1st Class, Patna in Complaint Case No.7984 of 2022, by which the learned Magistrate has taken cognizance against the petitioner under Sections 323, 504 and 420 of Indian Penal Code.

3. As per the complaint petition, the complainant and his son are co-owners of Mitsubishi Pajero SFX 4x4 four wheeler and they got it insured with Future Generali India Insurance Company Limited. The insurance period commenced from 06.10.2020 to 05.10.2021. It has been alleged that the said vehicle met with an accident on 11.05.2021 and the complainant filed a claim with the Insurance Company. After much passage of time when the insurance claim was not settled then the complainant sent a legal notice to the Insurance Company but thereafter also the insurance claim was not settled. It has further been alleged that in June, 2021, the complainant went to the local office of the Insurance Company at Patna and enquired about the matter then the Branch Manager became violent and abused him and also manhandled him. Thereafter, the complainant went to Gandhi Maidan Police Station for lodging the F.I.R. but the Police has not registered the F.I.R. whereafter, he knocked doors of the Senior Superintendent of Police, Patna but there also no case was registered. Ultimately, the present Complaint Case has been filed in the Court of learned Chief Judicial Magistrate, Patna. On the basis of aforesaid complaint petition, the Magistrate has taken cognizance under Sections Section 323, 504 and 420 of IPC against all the accused persons including the Petitioner.

4. Learned Senior Counsel for the petitioner submits that petitioner is the Managing Director and Chief Executive Officer of the Future Generali India Insurance Company, which is a company incorporated in the provisions of Companies Act, 1956 having its registered office in Mumbai and its branch office in Patna. He further submits that the learned Magistrate has passed the impugned order without applying the judicial mind and it is not based on the materials available on record. It is settled position of law that the Magistrate cannot trust the prosecution story blindly and the cognizance order must reflect the application of mind and appreciation of materials on record.

5. Learned Senior Counsel for the petitioner further submits that from the plain reading of the entire complaint petition, S.A. and enquiry witness, it is clear that there is absolutely even a whisper of allegations against the Managing Director and C.E.O. of the Insurance Company and as such, in the absence of such allegation, the impugned order of cognizance is bad in the eye of law. Further, no criminal offence whatsoever is made out against the petitioner and even if entire allegations are taken to be true on the face value, a consumer /

civil dispute is made out and the complainant has deliberately given it a criminal colour.

6. It has been submitted by learned Senior Counsel for the petitioner that the entire dispute relates to insurance policy and claim settlement for which effective remedy lies before the Insurance Ombudsman or District Consumer Disputes Redressal Commission, however, the complainant has deliberately registered the instant complaint thereby impleading superior officials in order to harass them and put undue pressure on the Insurance Company.

7. It is further submitted by learned Senior Counsel that the real fact of the case is that the complainant and his son got insured their vehicle with the Insurance Company for the period from 06.10.2020 to 05.10.2021. The complainant approached the Insurance company on 17.06.2021 for registration of the claim of the insured vehicle for damages arising out of accident occurred on 11.06.2021. The Insurance Company duly registered the claim and proceeded with investigation to assess the genuineness of the claim and on investigation, it was found that the vehicle was brought to the workshop of 12.05.2021 and the job card was opened on 12.05.2021. On the basis of aforesaid findings, the claim of the complainant was rejected and a communication to the effect was sent to the complainant vide letter dated 27.12.2021. Thereafter, the complainant has filed the instant complaint making false and exaggerated claims.

8. Learned counsel next submitted that the Insurance Company has followed all the due procedure and acted within four corners of the terms and conditions of the policy, in which it has been provided that the claim is liable to be rejected if facts are misrepresented or any fact is found to be incorrect. It is also submitted that no criminal offence can be fastened on the Insurance Company or any of its employees for acting in consonance with the policy.

9. Learned Senior Counsel for the petitioner has relied upon the decision of the Hon’ble Supreme Court rendered in the case of ***M/s Indian Oil Corporation v. M/s NEPC India Ltd., & Ors.,*** reported in ***AIR 2006 SC 2780*** wherein it has been held any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. He has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Usha Chakraborty and Anr., vs State of West Bengal and Anr.*** reported as ***2023 SCC***

Online SC 90.

10. Learned Senior counsel for the petitioner also relied the decision of the Hon'ble Supreme Court rendered in the case of ***M/S. Pepsi Foods Ltd. & Anr vs Special Judicial Magistrate & Ors,*** reported in (**1998)5 SSC 749**, wherein it has been held that summons issued must reflect the application of mind and they cannot be issued in the mechanical manner. He has also relied upon the decision rendered in the case of ***G. Sagar Suri vs. State of UP*** reported in ***(2000 (2) SCC 636*** and ***S.R. Sukumar vs. S. Sunaad Raghuram*** reported in ***AIR 2015 SC 2757***, wherein the same principle has been reiterated.

11. It has been argued by the learned Senior Counsel that the complainant has not explained the reasons for inordinate delay in filing of the instant complaint which shows that the allegations with respect to Sections 323 and 504 of the Indian Penal Code is super addition. In so far the offence under Section 420 is concerned, it is submitted that the petitioner-company has acted in accordance with the terms of the policy, therefore, the offences under Section 420 is also not made out. In support of his submission, he has relied upon ***S. W. Palanitkar and Ors. Vs. State of Bihar and Anr.*** reported in ***AIR 2001 SC 2960***.

12. It is further submitted that it is settled position that dishonest intention and *mens rea* is an essential ingredient for fastening of offences under Section 420 of IPC which is absolutely missing in the instant case against the petitioner.

13. It has also been argued that even if the allegations are taken to be true on its face value, in such circumstances, only a case of consumer dispute is made out. The relevant provisions of Consumer Protection Act, 2019 is reproduced hereinunder :-

> *"Section 2(8) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;*
> *Section 2(11) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes (1) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and (ii) deliberate withholding of relevant information by such person to the consumer;*

14. Learned counsel next submitted that from perusal of definitions reproduced hereinabove and the allegations of the complainant, it is abundantly clear that the main grievance of the complainant relates to rejection of insurance claim which can effectively be adjudicated under the aegis of Consumer Protection Act, 2019, however, the complainant has deliberately filed the instant complaint to put pressure on the Company.

15. It is next submitted that it is trite principle of criminal laws that no vicarious liability can be fastened on the Managing Director of any company without any connection with the offence alleged. In the present case, the petitioner being the Managing Director and the Chief Executive Officer operate from the Head/Corporate Office of Company situated in Mumbai and as such, it is practically impossible for him to have any role in the alleged offences. Therefore, the present F.I.R. is liable to be quashed against the present petitioner.

16. In support of the aforesaid submission, learned Senior Counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Ravindranatha Bajpe Vs Mangalore Special Economic Zone Ltd. and Ors.*** reported in ***AIR 2021 SC 4587.***

17. Learned Senior Counsel for the petitioner has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Maksud Saiyed v. State of Gujarat and Ors.*** reported in ***(2008) 5 SCC 668*** and has submitted that in the aforesaid case it has been held that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company.

18. Lastly, learned Senior Counsel for the petitioner has relied upon the decision rendered in the case of ***State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors.*** reported as ***AIR 1992 SC 604***, wherein it has been held that inherent power under Section 482 of Cr.PC could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice and in cases wherein the criminal proceeding is manifestly attended with *malafide* and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

19. Learned counsel for the State and learned counsel for the opposite party no.2 have opposed the application and have submitted that the petitioner being the Managing Director and CEO of the insurance company is liable for the illegality for which criminal acts committed by the accused persons and therefore, the prosecution of the petitioner should not be quashed at this stage. The petitioner may be directed to raise all the grounds at the stage of framing of charge.

20. I have considered the rival contentions of the parties and perused the materials on record.

21. From the reading of complaint petition, it appears that there is dispute between the complainant and the Insurance Company, namely, Future Generali India Insurance Company with regard to insurance claim and the same has been repudiated and thereafter, the present complaint case has been filed by the opposite party no.2 but in the entire complaint, no allegation has been levelled against the petitioner.

22. In a similar situation, the Hon'ble Supreme Court in the case of ***Maksud Saiyed Vs. State of Gujarat*** (supra) has held in paragraph nos.13 to 15 as follows :-

> *"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz.*

as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liabibility of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

14. It will bear repetition to state that throughout the complaint petition, no allegation had been made as against any of the respondents herein that they had anything to deal with personally either in discharge of their statutory or official duty. As indicated hereinbefore, in the prospectus, a bona fide mistake had been committed. The fact that such a mistake had been a committed stands accepted. In any event, the statement that the matter was pending before DRT instead and place of the City Civil Court, Ahmedabad, per se, cannot be said to be defamatory as the fact that a suit was pending for recovery of the huge amount is neither denied nor disputed. Whether such a suit was maintainable and/or is ultimately to be decreed or disposed of is a question which has to be gone into in the suit itself. A criminal court cannot even take that factor into consideration. The High Court considered the matter at some great details. Having analysed the materials *placed before it, it was held :*

> *"... It was, therefore, stated that there was no suppression or concealment of any facts and it did not amount to criminal breach of trust and cheating on the part of the Bank as alleged by the complainant. The said export bills under L/C were negotiated by the Bank under the provisions of UCPDC 500 1995 Revision. The Bank has also informed vide its letter dated 8-2-2005 to M/s SBI Capital Markets Ltd. It was stated therein that the Bank has not concealed or suppressed any material fact against the interest of the public at large and investors in particular. The bona fide misdescription in setting out the nature of claim was unintentional. It was further stated that the material particulars like the amount of claim, date of filing and name of the Company was correctly mentioned. The misdescription did not materially influence/affect the decision of the investors/public…."*
>
> *It was furthermore opined:*
>
> *"It appears to the Court that the learned Chief Judicial Magistrate has not applied his mind while passing the order under Section 156(3) of the Criminal Procedure Code directing the police to investigate in the matter. The impugned order, on the face of it, reveals that he has not gone through the complaint. He has stated in the order that Accused 1 to 10 are*

> *Manager and Branch Manager of Dena Bank. As a matter of fact, Accused I was the Ex-Chairman and Managing Director of Dena Bank, and Accused 2 was the Executive Director. Accused 3 to 10 are Directors of Dena Bank. None of these persons are Managers or Branch Manager. Despite this, the learned Chief Judicial Magistrate has mentioned in his order that they are Managers or Branch Managers. With regard to the prospectus he has simply stated that the Bank has issued prospectus for its public issue and at p. 87 false informations were given so as to cause damage to the Company and to jeopardise the reputation of the Company. Despite the fact that the litigations are pending before the civil court he has mentioned about non-returning of export bills, etc. On these facts he has passed order under Section 156(3) of the Criminal Procedure Code, directing PSI, Sayajiganj Police Station to make inquiry in the matter."*
>
> *The approach of the High Court, with respect, is entirely correct.*

15. This Court in Pepsi Foods Ltd. v. Special Judicial Magistrate held as under: (SCC p. 760, para 28)

> *"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support*

> *his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto, b He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

The learned Magistrate, in our opinion, shall have kept the said principle in mind.

23. In the case of ***Ravindranatha Bajpe vs. Mangalore Special Economic Zone Ltd. & Ors.*** (supra) held as follows :-

"27. As held by this Court in the case of India Infoline Limited (supra), in the order issuing summons, the learned Magistrate

has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director / Executive Director and/or Deputy General Manager and/or Planner / Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6."

24. In this case, the petitioner has only been implicated as an accused because he is the Managing Director and Chief Executive Officer of the Insurance Company which has insured the vehicle of the complainant. There is no specific allegation or the averment with respect to the role played by the petitioner in his capacity as the Managing Director and Chief Executive Officer of the Insurance Company. Therefore, the continuance of the criminal proceeding against the petitioner is nothing but an abuse of the process of the Court. Moreover, when the insurance claim of the complainant was repudiated by the Insurance Company, the complainant could have approached the Consumer Forum as he is a consumer within the definition of the Consumer Protection Act. The consumer dispute could be decided by the Consumer forum and criminal cases should not be filed by the claimant to arm twist/force the Insurance Company to pay the claim though it has been repudiated.

25. In these circumstances, this application is allowed. Accordingly, the complaint case no.7984 of 2022 and all consequential proceedings arising out of the aforesaid complaint including the order dated 24.03.2023 passed by learned Judicial Magistrate, 1st Class, Patna are hereby quashed with respect to present petitioner only.

(Sandeep Kumar, J)

sanjeev/-

AFR/NAFR	N.A.F.R.
CAV DATE	NA
Uploading Date	14.08.2024
Transmission Date	NA