* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on: 27th August, 2024*
Pronounced on:30th September, 2024

\+ **CRL.M.C.1819/2020**

1. **MS. SUNAYNA SABHARWAL**
D/o Shri Parvesh Kmar Sabharwal
R/o B-6/447, Sector-21,
Jal Vayu Vihar, Noida-201301.

2. **MS. VANDANA KUMAR**
W/o Shri Parvesh Kumar Sabharwal
R/o P-6/447, Sector-21,
Jal Vayu Vihar, Noida-201301.

..... Petitioners

Through: Mr. Aaditya Vijay Kumar, Ms. Akshita Katoch and Mr. Pursoth Kannar, Advocates.

versus

1. **THE STATE**
NCT of Delhi

2. **THE HDFC STANDARD LIFE INSURANCE COMPANY LIMITED**
Through Managing Director
Regd. Office: Ramon House, H.T. Parekh Marg,
169, Backbay Reclamation
Churchgate, Mumbai-400020.

Also at: 11th floor, Lodha Excelus,
Apollo Mills Compound,
NM Joshi Marg, Mahalaxmi,
Mumbai-400011.

Also at: 4th Floor, Vijaya Building
17, Barakhamba Road,
New Delhi-110001.

3. **MR. KARAN MALHOTRA**
HDFC Bank, E-6, Local Shopping Centre,
Masjid Moth, Greater Kailash-II,
New Delhi-110048.

4. **MS. POOJA SAPRA**
Official of HDFC Standard Life Insurance Company Limited
Regd. Office: Ramon House, H.T. Parekh Marg,
169, Backbay Reclamation
Churchgate, Mumbai-400020.

Also at: 11th floor, Lodha Excelus,
Apollo Mills Compound,
NM Joshi Marg, Mahalaxmi,
Mumbai-400011.

5. **SH. HIMANSHU NAYAK**
Official of HDFC Standard Life Insurance Company Limited
Regd. Office: Ramon House, H.T. Parekh Marg,
169, Backbay Reclamation,
Churchgate, Mumbai-400020.

Also at: 11th floor, Lodha Excelus,
Apollo Mills Compound,
NM Joshi Marg, Mahalaxmi,
Mumbai-400011.

.....Respondents

Through: Mr. Hemant Mehla, APP for the State with SI Mohit Kumar PS CP park Mr. Narendra Hooda, Sr. Advocate with Mr. Rishab Jain, Mr. Sharique Hussain and Mr. Shiv Bhattnagar, Advocates

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A Petition under Section 482 Code of Criminal Procedure, 1973 ("Cr.P.C." *hereinafter*) has been filed on behalf of the petitioner to challenge the *Order dated 07.03.2019* passed by the learned M.M. dismissing the Complaint of the petitioner under Section 200 Cr.P.C. read with Section 190 Cr.P.C. which Order has been upheld by learned ASJ vide his Order dated 16.12.2019.

2. ***Briefly stated***, the petitioner in the Complaint under *Section 200* Cr.P.C. had stated that petitioner No.1 Smt. Sunayna Sabharwal was having an account in HDFC Bank, Masjid Moth, G.K.-II, New Delhi. One Karan Malhotra, respondent No.3 who was working in the Bank had an easy access to the bank account of the complainant. He approached her in June, 2011 and persuaded her to invest in a scheme which would so function that the Complainant could withdraw the money as and when she chose. She agreed to invest in the said scheme and paid Rs. 5 lakhs in the year 2011 and again in 2012. In November, 2013, the complainant with the intent to close the Policy and redeem the amount wrote a letter, but the Bank refused to do so.

3. She filed a complaint under *Section 12* of *Consumer Protection Act, 2019* against the accused persons being responsible for the day to day affairs of HDFC Life Insurance Company. The respondents herein filed a reply, copy of which was received by the Complainant on 07.01.2015. Along with the Reply, they have filed on *official illustration of HDFC Standard Life Insurance Company dated 27.12.2011* which had forged signatures of Complainant No.1 along with the signatures of accused No.4 and 5.

4. It is claimed that Complainant No.1 had never signed any document and her signatures were forged and fabricated. The respondents and other officials of the Bank, have misappropriated the fund deposited by the

Complainant. It is further claimed that the documents allegedly issued by the accused person, were never delivered to her. The Policy alleged to have been sent to the Complainant No.2, was never received nor was it ever signed by her. The Complainant thus, gave a Complaint dated 07.05.2015 to the Police, but no action was taken. Hence, the Complaint under Section 200 Cr.P.C. was filed for taking cognizance for the offences under Section 465/471/120-B IPC.

5. The Complainant examined herself as CW1 and CW2 Ms. Vandana Kumar in her pre-summoning evidence. The learned M.M observed that the sole allegation of the Complainant was that the *official illustration Mark-A* issued by the Bank had her forged signatures. It was held that the bald assertion of the signatures on the photocopy relied upon by the petitioner, was not sufficient as neither the petitioner sought production of the original document nor was there any cogent evidence of the Handwriting Expert was produced to substantiate that the signatures were forged. Consequently, the Complaint under Section 200 Cr.P.C. was dismissed.

6. The learned ASJ did not find any fault with the Order of the learned M.M and dismissed the *Revision Petition* on 16.12.2019.

7. Aggrieved by the two Orders, the present Writ Petition has been filed, wherein essentially it is argued that the original *official illustration* could not have been produced by the petitioner as it was not in her power and possession but the original document was available with the respondent/HDFC Bank. Moreover, the Court itself could have compared the admitted signatures of the Complainant with the signatures on *official illustration Mark A* to ascertain that the signatures were forged. The learned M.M. having failed to do so, committed an illegality in rejecting the

Complaint under Section 200 Cr.PC. The Petitioner has placed reliance on *Shyamlal Mohanlal v. State of Gujarat* AIR 1965 SC 1251.

8. ***Learned counsel on behalf of the respondent Bank has argued*** that the *official illustration* was one of the many documents, the original Policy had been issued to the Complainant and was duly delivered to her which had intentionally not been produced by her. Furthermore, pursuant to subscribing to the Scheme, not once but twice, the payment of Rs.5 lakhs per year has been made. It is too late in the day for her to assert that she had not signed the said Policy document.

9. It is further explained that under the Scheme the policy could have been pre-maturely redeemed only after three years. The Complainant had been advised to invest for the third year in order to be able to redeem the same pre-maturely, but she was not inclined to abide by the terms of the Policy.

10. In the end, it is submitted that there was neither any forgery committed, nor any misappropriation of the money of the Complainant has been done by the Bank. The Complaint, therefore, has been rightly dismissed.

11. In regard to proving the disputed signatures, reliance has been placed on *The State (Delhi Administration) v. Pali Ram* (1979) 2 SCC 158 to state that as a matter of prudence, the Court should call upon an expert to resolve the matter of disputed signatures and then reach its conclusion as to the authenticity of signature on the basis of its own finding and not solely on the basis of the expert. Similar observations have been made in *Ajit Savant Majagvai v. State of Karnataka* (1997) 7 SCC 110; *Ajay Kumar Parmar v. State of Rajasthan* (2012) 12 SCC 406; *Shyam Sundar Chowkhani* alia

Chandan & Ors. V. Kajal Kanti Biswas & Ors. (1999) 2 GLR 529; Johny Kunnumpurath House v. State of Kerala 2024 SCC OnLine Ker 804; and V. Sujatha v. State of Kerala & Ors. (1994) Supp (3) SCC 436.

12. **Submissions heard**.

13. Admittedly, the Petitioner No.1 Smt. Sunayna Sabharwal had taken the Policy from the HDFC Bank. She even acted upon the said Policy by giving the premium of Rs.5 lakhs each for two consecutive years. It is in the third year that she intended to redeem the Policy and sought return of her money, but was denied as in accordance with the terms of the Policy, minimum three years was the requisite period before any redemption could be permitted.

14. In order to explain the conduct of the Complainant of having paid the premium for two years, it has been asserted by her that she had done so on the assurances of Karan Malhotra/respondent No.3 who was the employee of HDFC Bank. While she has asserted that the *official illustration*, copy of which has been produced by the respondent bear her forged signatures, but she herself has failed to produce the original Policy documents on the specious ground that the same were never given to her. She could have summoned the Policy or the original *official illustration* by examining some witness from the concerned Bank/ respondent, but she has failed to do so. Pertinently, the Original Policy documents including the official illustration Mark A, have not been produced in original.

15. The petitioner has claimed that this *official illustration* does not bear her signatures. However, the onus was on her to prove that the signatures were forged. In the absence of the original documents, the Court could not have given any finding by comparing the signatures on photocopy with her

original signatures. It is settled law that unless there are signatures in the original, the comparison is inevitably not possible on the basis of vague, faint or photocopied signatures. The learned M.M has, therefore, rightly observed that there was no cogent evidence led to prove that the official illustration had her forged signatures. Additionally, no endeavour whatsoever had been made by the petitioners to summon the originals to be placed on record. It has been rightly concluded that no offence is disclosed from the evidence led by the petitioner.

16. It may be observed that the petitioner has already filed a Complaint In Consumer Court to seek redressal of her Claim. Essentially, the Petitioner is seeking return of her invested Money under a Policy with the respondent Bank, which it is declining to refuse under the terms of the Policy. The nature of dispute is civil as there is no misappropriation but refusal to pay the amount on the stated grounds. Also, no dishonest intention can be imputed as the Policy and its terms were stated in the Policy documents. She may not have read them or may have relied on the assurances given by the Agent of the Bank, but with all the terms printed on the Policy, and petitioner having acted on it for two years, cannot now assert Cheating. The alleged forgery as detailed above is not established.

17. There is no merit in the present petition, which is hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 30, 2024
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