

(2016) 06 CAL CK 0067

CALCUTTA HIGH COURT

Case No: C.R.R. No. 1692 of 2015.

The Divisional Manager, National
Insurance Company Limited -
Appellant @HASH Sri Jati Ranjan
Banik and another - Opposite
Parties

APPELLANT

Vs

RESPONDENT

Date of Decision: June 10, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 397, Section 401, Section 482
- Penal Code, 1860 (IPC) - Section 120B, Section 201, Section 209, Section 406, Section 420, Section 468, Section 471, Section 477A

Citation: (2017) 1 AICLR 348 : (2016) 4 CalCriLR 137 : (2016) 4 CalHCN 616

Hon'ble Judges: Ranjit Kumar Bag, J.

Bench: Single Bench

Advocate: Mr. Abhijit Gangopadhyay, Ms. Supriya Dubey and Ms. Shilpi Ganguly, Advocates, for the Appellant; Mr. Fazlur Rahaman, Advocate, for the Opposite Party

Final Decision: Disposed Off

Judgement

Mr. Ranjit Kumar Bag, J. - The petitioner, Divisional Manager, National Insurance Company Limited has prayed for quashing of the criminal proceeding of Complaint Case No.C-2639 of 2014 pending before the court of learned Metropolitan Magistrate, 14th Court, Calcutta by filing this revision under Section 401 read with Section 482 of the Code of Criminal Procedure.

2. The backdrop of the present revisional application is as follows:- The opposite party no.1/complainant filed a petition of complaint against the petitioner and the Managing Director of National Insurance Company Limited before the court of learned Chief Metropolitan Magistrate, Calcutta praying for issuance of process

under Sections 406/420/120B/198/ 372/177/164/382/201/209/468/471/477A of the Indian Penal Code. Learned Magistrate took cognizance of the offence, examined the opposite party no.1/complainant and issued process against the petitioner and the Managing Director of National Insurance Company Limited. The petitioner has challenged the order of taking cognizance by the learned Magistrate and prayed for quashing of the said criminal proceeding.

3. Mr. Abhijit Gangopadhyay, learned counsel appearing on behalf of the petitioner contends that National Insurance Company Limited has not been arraigned as an accused in the petition of complaint, though the opposite party no.1/complainant has made allegation against the National Insurance Company Limited. He further submits that the National Insurance Company Limited is still willing to pay Rs.64,360/- to the opposite party no.1/complainant for reimbursement of the medical bill in connection with the mediclaim policy issued in his favour by National Insurance Company Limited. By referring to the order passed by the Consumer Courts, Mr. Gangopadhyay submits that the opposite party no.1/complainant did not get favourable order from the Consumer Court and the appeal preferred by him against the order of State Consumer Disputes Redressal Commission is pending for admission before the National Consumer Disputes Redressal Commission at New Delhi. By referring to the averments made by the opposite party no.1/complainant in the petition of complaint, Mr. Gangopadhyay submits that the allegations made by the opposite party no.1/complainant do not disclose any offence punishable under the Indian Penal Code and as such the criminal proceeding initiated against the petitioner is liable to be quashed.

4. Mr. Fazlur Rahaman, learned counsel for the opposite party no.1 contends that the allegations made by the opposite party no.1/complainant in the petition of complaint *prima facie* disclose offence punishable under Sections 406/420/120B/201/209/468/471/477A of the Indian Penal Code. He further submits that learned Metropolitan Magistrate has rightly taken cognizance of the offence and issued process against the petitioner and the co-accused person to face the trial. Mr. Rahaman has also cited five decisions of the Supreme Court and one decision of our High Court in support of his contention that this court cannot invoke inherent power under Section 482 of the Code of Criminal Procedure to quash the criminal proceeding initiated by the opposite party no.1/complainant against the petitioner before the court of learned Magistrate.

5. For proper appreciation of the submissions made by the learned counsel representing the respective parties, it is necessary to narrate in brief, the allegations made by the opposite party no.1/complainant against the petitioner and the Managing Director of National Insurance Company Limited. The contents of the petition of complainant disclose that in the year 2007, the opposite party no.1/complainant obtained Mediclaim Policy bearing No.104200 /48/08-85000878 from the National Insurance Company Limited for which certificate was given to the

opposite party no.1/complainant covering medical expenditure to the tune of Rs.1 lakh. It is alleged that the trust imposed by the opposite party no.1/complainant on National Insurance Company Limited was broken when the said National Insurance Company Limited refused to settle the claim of the opposite party no.1/complainant in the year 2008. It is further alleged that the sectional clerk, Bidhan Roy Chowdhury and the Divisional Manager, Bhaswati Chatterjee demanded Rs.5,000/- from the opposite party no.1/complainant for settling the claim made by the opposite party no.1/complainant. The opposite party no.1/complainant claimed Rs.87,773/- as reimbursement of medical expenditure incurred by the opposite party no.1/complainant for his medical treatment in R.N. Tagore International Institute, but the same has not yet been paid in spite of having valid medi-claim policy of the opposite party no.1/complainant. The opposite party no.1/complainant prayed for taking cognizance of the offence, examination of the opposite party no.1/complainant under Section 200 of the Code of Criminal Procedure and issuance of process against the petitioner and the Managing Director of National Insurance Company Limited.

6. It appears from record that the opposite party no.1/complainant filed a complaint before the District Consumer Forum for refusal on the part of the National Insurance Company Limited to settle the claim made by the opposite party no.1/complainant in connection with the bill for his medical treatment to the tune of Rs.87,773/-. By order dated November 14, 2012, the District Consumer Forum, Calcutta, Unit-1 directed the Managing Director and Divisional Manager of National Insurance Company Limited to make payment of Rs.23,373/- towards medical expenditure of the opposite party no.1/complainant along with interest @ 9% per annum from the date of repudiation till realisation of the amount and compensation to the tune of Rs.50,000/- for harassment and mental agony and litigation cost of Rs.5,000/-. The said order of the District Consumer Forum, Calcutta, Unit-1 was set aside by the State Consumer Disputes Redressal Commission, West Bengal on January 3, 2014. The revision preferred by the opposite party no.1/complainant against the order passed by the State Consumer Disputes Redressal Commission, West Bengal is pending for admission as reflected from the order dated March 10, 2016 passed by the National Consumer Disputes Redressal Forum in connection with Revision Petition No.1090 of 2014.

7. Now, I would like to discuss the decisions cited by learned counsel for the opposite party no.1/complainant in support of his contention that this court cannot invoke inherent power under Section 482 of the Code of Criminal Procedure to quash the instant criminal proceeding pending before the court of learned Metropolitan Magistrate. In "**State of Karnataka v. M. Devendrappa**" reported in **SCC (2002) 3 SCC 389**, the Supreme Court has reiterated in paragraph 4 the proposition of law laid down in "State of Haryana v. Bhajanlal" for quashing of the criminal proceeding by invoking inherent power under Section 482 of the Code of Criminal Procedure. Similarly, in "**State of Madhya Pradesh v. Awadh Kishore**

Gupta" reported in (2004) 1 SCC 691, the Supreme Court has laid the proposition of law for quashing of the criminal proceeding by invoking power under Section 482 of the Code of Criminal Procedure. In "**Thiru V Thanigachalam v. State of Tamil Nadu" reported in (1976) 4 SCC 304**", the Supreme Court has observed in paragraph 3 that the question whether the appellant is a public servant within the meaning of Section 21 of the Indian Penal Code can be decided by the trial court after recording of evidence as the said issue is a mixed question of fact and law. In "**Satvinder Kaur v. State Government of NCT of Delhi" reported in (1999) 8 SCC 728**", the Supreme Court has observed in paragraph 7 that the High Court will have to consider entirely the allegations made in the complaint and the documents accompanying the same for the purpose of formation of opinion whether the High Court will interfere at the stage of investigation. In "**J. P. Sharma v. Vinod Kumar Jain" reported in (1986) 3 SCC 67**", the Supreme Court has laid down in paragraph 21 that the test for quashing of the criminal proceeding is to consider the allegations made in the complaint without adding or subtracing anything and to form opinion whether the offence is made out or not. In paragraph 23 of the said report, the Supreme Court has held that where the allegation of entrustment and mis-appreciation was made under Section 405 and 406 of the Indian Penal Code, a *prima facie* case was made out for the trial of the offence. In "**Sachchidananda Singh v. State of West Bengal" reported in (2008) 1 C.Cr.L.R. 582**", learned single Judge of this High Court has held in paragraph 4 that the High Court will not interfere when the ingredients of the offences are disclosed in the complaint and there is no material to show that the complaint is *mala fide* or frivolous or vexacious.

8. On consideration of the decisions referred to herein above, I find that this court will consider only the allegations made by the opposite party no.1/complainant in the petition of complaint and the said allegations must be taken in their entirety without adding or sub-tracting for formation of opinion whether any offence punishable under the Indian Penal Code is made out. This court is not entitled to look into any document cited on behalf of the accused person/petitioner for the purpose of formation of opinion whether any offence punishable under the Indian Penal Code is made out against the petitioner and another co-accused person. On perusal of the allegation made in the petition of complaint, I do not think that there is any mixed question of law and fact for decision of the trial court after recording of evidence during the trial and as such, the ratio of the decision of the Supreme Court in "**Thiru V Thanigachalam v. State of Tamil Nadu**" (*supra*) cannot be made applicable in the facts of the present case. Since the decisions cited by learned counsel for the opposite party no.1/complainant are based on the decision of the Supreme Court in "**State of Haryana v. Bhajan Lal**", I would like to rely on the said decision to decide whether the criminal proceeding against the petitioner is liable to be quashed. The criteria laid down by the Supreme court in paragraph 102 of "**State of Haryana v. Bhajan Lal" reported in 1992 SCC (Cri) 426**" for quashing of the criminal proceeding are as follows:-

- (a) Whether the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (b) Whether the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognisable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (c) Whether the uncontested allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (d) Whether the allegations in the FIR do not constitute a cognisable offence, but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (e) Whether the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (f) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (g) Where a criminal proceeding is manifestly attended with mala fide 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.

9. By applying the above test laid down by the Supreme Court in the facts of the present case, I have to decide whether the offence punishable under the Indian Penal Code is made out from the allegations made by the opposite party no.1/complainant in the petition of complaint. I have already observed that the opposite party no.1/complainant obtained medi-claim policy from the National Insurance Company Limited to cover medical expenditure to the tune of Rs.1 lakh. The opposite party no.1/complainant made a claim of Rs.87,773/- for reimbursement of his medical bill incurred by him for treatment in R.N. Tagore International Institute. The opposite party no.1/complainant has refused to accept Rs.64,360/- from the National Insurance Company Limited for non-payment of the balance amount claimed by him. The opposite party no.1/complainant has alleged that one Bidhan Roy Chowdhury, Sectional Clerk and one Bhaswati Chatterjee, Divisional Manager demanded Rs.5,000/- as bribe for settling the claim of money

from the opposite party no.1/complainant. The complainant/ opposite party no.1 has prosecuted the Managing Director of National Insurance Company Limited and the Divisional Manager of National Insurance Company Limited without impleading the said National Insurance Company Limited, which has refused to settle the claim of the opposite party no.1/complainant. The principle of vicarious liability is not applicable in connection with the offences punishable under the Indian Penal Code and as such the petitioners being the Managing Director and the Divisional Manager of the National Insurance Company Limited cannot be prosecuted on the principle of vicarious liability, when the allegation is levelled against the National Insurance Company Limited.

10. Now, let us see whether the offences for which process has been issued by learned Magistrate have been made out from the allegations made in the petition of complaint. What I understand from the averments made by the opposite party no.1/complainant in the petition of complaint is that the complainant has considered the trust imposed on the National Insurance Company Limited as entrustment of property, which is misnomer within the ambit of definition of criminal breach of trust under Section 405 of the Indian Penal Code. The allegations made in the petition of complaint do not indicate any entrustment of property with the National Insurance Company Limited, nor is there any misappropriation of the said property by the said National Insurance Company Limited. So, the offence punishable under Section 406 of the Indian Penal Code is not made out from the contents of the petition of complaint. The non-payment of dues of Rs.23,373/- by the National Insurance Company Limited as the same is not permissible as per terms and conditions of implied contract between the parties reflected in the policy of mediclaim, cannot amount to cheating within the ambit of Section 415 of the Indian Penal Code. So, the allegations made in the petition of complaint do not disclose any offence punishable under Section 420 of the Indian Penal Code. On close scrutiny of the entire allegations made by the opposite party no.1/complainant and by taking the said allegations in their entirety, I cannot persuade myself to hold that any offence punishable under Sections 406/420/120B/201/209/468/471 /477A of the Indian Penal Code is made out. Since no offence is made out from the allegations made by the opposite party no.1/complainant in the petition of complaint, the criminal proceeding is liable to be quashed under Section 482 of the Code of Criminal Procedure as laid down by the Supreme Court in "State of Haryana v. Bhajanlal" (supra). The irresistible inference of my entire above observations is that the continuation of the criminal proceeding against the petitioner and another co-accused person before the trial court will be an abuse of the process of the court.

11. In view of my above findings, the criminal proceeding of Complaint Case No.C-2639 of 2014 pending before the court of learned Metropolitan Magistrate, 14th Court, Calcutta is quashed. The opposite party no.1/complainant is at liberty to realise his outstanding dues in connection with the mediclaim policy from the National Insurance Company Limited by following the procedure of law. The

criminal revision is, thus, disposed of.

12. Let a copy of the judgment and order be sent down to the learned court below for favour of information and necessary action.

13. Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible.