

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3889 of 2013

Jagjit Mohan Malhotra

-Vs-

State of West Bengal & Anr.

For the Petitioner : Mr. Souvik Mitter
Ms. R. Das
Mr. Indranil Karfa

For the State : Mr. Navanil De

Heard on : 23.06.2023

Judgment on : 04.10.2023

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application is preferred by the petitioner praying for quashing of the proceeding being G.R. Case No. 2691/11 arising out of Hare Street Police Station Case No. 524 dated 30.07.2011 and charge-sheet being No.31/13 dated 29.01.2013 under Sections 120B/406/420/468 of the Indian Penal Code, 1860 filed before the Learned Chief Metropolitan Magistrate, Calcutta as also the orders passed in connection with the said proceeding, pending before the Learned Chief Metropolitan Magistrate, Calcutta.

2. On the basis of a letter of complaint addressed to the Officer-in-Charge of Hare Street Police Station, by one Bijoy Kumar Mallick (herein after referred to as the Complainant/Opposite Party), the instant case being Hare Street Police Station Case No. 524 dated 30.07.2011, was registered for investigation against the Accused/Petitioner and six others for commission of offences punishable under Sections 120B/420/406/468 of the Indian Penal Code, 1860.
3. The petitioner stated to be a diligent and faithful employee of Max New York Life Insurance Company Limited, a company duly incorporated under the Companies Act, 1956, dealing with the business of Life Insurance policies.
4. The allegations levelled in the charge-sheet against the accused/petitioner are as follows:-

The accused/petitioner pursuant to a criminal conspiracy hatched up between him and another induced the complainant/opposite party to obtain an insurance policy from the aforesaid company, against a lucrative return. Subsequently, the complainant came to know that there were two policies in his name and the mode of return of the assured sum was not in consonance with the sum represented by the accused/petitioner and another.

In course of investigation the investigating agency recorded statements of the available witnesses as well as the statement of the accused/petitioner and after complying with all the necessary formalities submitted charge sheet against the accused/petitioner and another for commission of the offences punishable under Sections 120B/406/420/468 of the Indian Penal Code, 1860.

5. The petitioner stated mere perusal of the charge-sheet and its accompaniments would reveal that the prosecuting agency failed to make out any case against the accused/petitioner for which the accused/petitioner could be asked to face the trial in connection with the instant case. The Learned Magistrate without perusing the materials produced in support of the prosecution case, in its true and proper perspective erroneously took cognizance of the alleged offences against the accused/petitioner.
6. The petitioner stated on 04.09.2006 the complainant/ opposite party purchased two life insurance policies being Plan-Life Partner Plus and Level Term to Age 60, bearing Nos. 296546807 and 296546815 respectively from the aforesaid company after being duly aware and satisfied with the terms and conditions of those two policies. The Petitioner further stated initially the forms were supplied to the complainant/opposite party and after going through the same in a meticulous manner and also being aware of each and every terms and conditions of those policies, signed the same. It is pertinent to state that the complainant/ opposite party at the relevant point of time was the Additional Director of D. G. Central Excise Intelligence, when he failed to continue with the policies, using his official post, initiated the instant case against the petitioner and others.
7. The petitioner stated initially the complainant/opposite party paid the premium amount regularly till fourth year, after which he was unable to continue with the policies any further and under such circumstances asked the aforesaid Company to return him the entire amount of premium that he

deposited with the aforesaid company forthwith, contrary to the terms and conditions of the policies purchased by the complainant/opposite party. The accused/petitioner further stated, having failed to recover the money; the complainant/opposite party by suppressing the material facts and representing the same in a twisted manner initiated the instant case against the accused/petitioner over certain vague allegations.

8. The petitioner stated further continuance of the instant proceeding is nothing but a futile exercise of law because true and proper appreciation of the materials on record would reveal that the instant case was initiated as a pressure tactics to recover the amount which he had already deposited with the aforesaid company as premium of the impugned policies, which he failed to continue till its maturity. The complainant/opposite party has actually given a criminal cloak to a civil dispute to exert pressure upon the accused/petitioner to compel him to succumb to the undue pressure of the complainant/opposite party, which is non-est in the eye of law.
9. The Learned Advocate for the petitioner submitted that :-
 - i. The impugned proceeding is against the established principles of law as laid down by the Hon'ble Apex Court and by this Court on several occasions as also in total violation of the expressed provisions of the Code of Criminal Procedure, 1973 and thus the interference of this Court is highly solicited in the interest of justice and equity.
 - ii. The continuance of the aforesaid proceedings is glaring example of the abuse of the process of Court which if allowed to continue for a single

day beyond the stage it has already reached will degenerate itself into a weapon of harassment and as such is liable to be quashed forthwith.

- iii. The instant case has been initiated at the instance of the complainant/opposite party against the accused/petitioner for commission of the alleged offences by suppressing all material facts and representing the factual scenario in a twisted manner with the sole intention to exert pressure upon him to compel him to undue demand of the complainant/opposite party and also to use the same as pressure tactics to squeeze money from the accused/petitioner under the garb of recovering the amount he deposited with the aforesaid company as premium of policies.
- iv. On or about 04.09.2006, the complainant/opposite party purchased two insurance policy being PLAN Life Partner Plus and Level Term Age 60, bearing Nos. 296546807 and 296546815 respectively from the aforesaid company after being duly aware and satisfied with the terms and conditions of those two policies.
- v. Initially the forms were supplied to the complainant/opposite party and he after going through the same in a meticulous manner and also being aware of each and every terms and conditions of those policies, signed the same. It is pertinent to state that after the complainant/opposite party failed to continue the policies any further cannot take benefit of his own wrong and/or negligence on his part.
- vi. Initially the complainant/opposite party paid the premium amount regularly but after making payment of premium for four years, he was

unable to continue the policies any further and under such circumstances asked the aforesaid company to return him the entire amount of premiums that he deposited with the aforesaid company forthwith, which is contrary to the terms and conditions of the policies purchased by the complainant/opposite party.

- vii. The complainant/opposite party having failed to recover the money, by suppressing the material facts and representing the same in a twisted manner initiated the instant case against the accused/petitioner over some vague and bad allegations.
- viii. Further continuance of the instant proceeding is nothing but futile exercise of law because true and proper appreciation of the materials on record would reveal that the instant case was initiated as a pressure tactics to recover the amount which he had already deposited with the aforesaid company as premium of the impugned policies, which he failed to continue till its maturity.
- ix. The complainant/opposite party has actually given a criminal cloak to a civil dispute to exert pressure upon the accused/petitioner to compel him to succumb to the undue pressure of the complainant/opposite party, which is non-est in the eye of law.
- x. Mere perusal of the Charge-Sheet and the materials collected by the Investigating Officer during the course of investigation would reveal that the prosecuting agency failed to make out any case against the accused/petitioner for which he could be asked to face ordeal of trial in connection with the instant case. The Learned Magistrate without

perusing the materials produced in support of the prosecution in its true and proper perspective erroneously took cognizance of the alleged offences against the accused/petitioner.

- xi. Mere mention of the sanctions and the language of those Sections is not the be all and end of all of the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in commission of that offence.
- xii. The prosecuting agency failed to make out any case against the petitioner from which a reasonable inference can be drawn that from the very inception the accused/petitioner had fraudulent intention to defraud the complainant/opposite party by causing wrongful gain to himself and wrongful loss to the complainant/opposite party.
- xiii. The complainant/opposite party has in fact given a civil dispute the cloak of a criminal proceeding and as such have used the same to exert pressure upon the accused/petitioner to recover the amount he paid as premium of policies, much prior to its maturity.
- xiv. True and proper appreciation of the Charge-Sheet and its accompaniments would unerringly reveal that there is no allegation against the accused/petitioner that he was ever entrusted with any property of the complainant/opposite party or he had dominion over any property of the complainant/opposite party and as such no question of misappropriation and/or willful misuse of the same would at all arise.

- xv. During the course of investigation the Investigating Agency failed to seize any forged document and/or collect any material in support of the allegation that the accused/petitioner has ever manufactured and/or prepared any false document to defraud the complainant with dishonest intention.
- xvi. The accused/petitioner has been asked to face the ordeal of trial for commission of the alleged offence punishable under Section 468 of the Indian Penal Code, 1860 on the basis of some uncorroborated apprehensions and/or suspicions of the complainant/opposite party, which is non-est in the eye of law.
- xvii. There is no explanation in the letter of complaint as to why there is an inordinate delay of about ten months in setting the law into motion against the accused/petitioner for commission of the alleged offence and such inordinate delay assumes a great significance in the instant case because the complainant/opposite party did not approach the Learned Court with clean hands and set the law into motion against the accused/petitioner in connection with the instant case by representing the entire factual scenario in a twisted manner.
- xviii. It has been categorically stated by the Hon'ble Apex Court that in order to prevent judicial process from being an instrument of oppression or harassment, exercise of inherent power is not only desirable but necessary also, so that judicial forum of court may not be allowed to be utilized for an oblique motive.

xix. The further continuance of the proceeding is otherwise bad in law and the same as such is liable to be quashed.

10. Heard the submission of Learned Advocates for the petitioner as well as the State.

11. The complainant entered into an agreement with the Company to pursue the policy bond through payment of premium on the basis of stipulated terms and conditions. It is imperative that the complainant must have read the terms and conditions of the agreement and then on knowledge signed the same. Pertinently there is no entrustment of property or transfer of dominion of the same on the petitioner who acted as an agent/staff of the Company. The complainant should have meticulously and diligently assessed the implication of the processes to be followed and the resultant return to be received. Any deviation from the terms and conditions shall entail violation of a contractual transaction culminating into a civil dispute. The complainant/opposite party did not entrust any property to the accused/petitioner or he had dominion over any property belonging to the complainant/opposite party, therefore the question of dishonest misappropriation in respect of any property belonging to the complainant/opposite party does not arise.

12. The complainant has the option to move the Civil Court in case there has been a violation of the terms and conditions of a contract entered into by and between the parties. However, the dispute between the parties, if allowed to continue before the Trial Court will result in the abuse of the process of law and accordingly the instant revisional application is allowed.

13. The proceeding being G.R. Case No. 2691 of 2011, arising out of Hare Street Police Station Case No. 524 dated 30.07.2011, and charge-sheet being No.31 of 2013 dated 29.01.2013 under Sections 120B/406/420/468 of the Indian Penal Code, 1860 filed before the Learned Chief Metropolitan Magistrate, Calcutta as also the orders passed in connection with the said proceeding, pending before the Learned Chief Metropolitan Magistrate, Calcutta, is quashed.
14. Connected application if any is also disposed of accordingly.
15. There is no order as to cost.
16. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
17. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)