(1978) 02 PAT CK 0022

In the Patna High Court

Case No : Criminal Rev. No. 923 of 1977

K.P. Modi and Others — APPELLANT

Vs

Basant Kumar Sinha — RESPONDENT

Date of Decision : 17-02-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
General Insurance Business (Nationalisation) Act, 1972 — Section 38
Penal Code, 1860 (IPC) — Section 162, 164, 21, 384, 406

Citation : (1978) 26 BLJR 158

Hon'ble Judges : Uday Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Uday Sinha, J.—This application in revision is directed against an order of the learned Sub-divisional Judicial Magistrate, Dinapur, dated the 15th July, 1977 by which he took cognizance of offences under Sections 420 and 420B of the Indian Penal Code and issued processes against the petitioners.

2. Petitioner Nos. 1 and 2 were the Chairman-cum-Managing Director and Assistant General Manager respectively of National Insurance Company Limited with headquarters at Calcutta. Petitioner No. 3 is the Senior Divisional Manager of the same Company at Patna and petitioner No. 4 was the Branch Manager, at the relevant time at Patna. Petitioner No. 5, R.K. Prasad is the Inspector of the said Company. They were all summoned by the learned Sub-divisional Judicial Magistrate, Dinapur to answer the charge u/s 420/420B of the Indian Penal Code levelled against them by the complainant opposite Party.

3. The facts out of which the present application arises are that the opposite party was the Managing partner of Goldeu Enterprises, a Small Scale Industries firm. The firm had timber business and manufactured wooden cable drums, crates, furnitures, packing boxes etc. besides being general orders suppliers of electrical and mechanical goods. The firm had stocks of wooden logs which were

hypothecated with the State Bank of India at Dinapur on the security of which it had been granted financial accommodation by the Bank. The goods hypothecated were insured with National Insurance Company Limited of which the petitioners were office bearers. This insurance used to be effected at the initiative of the State Bank of India. Up till 1975 the goods were insured for a sum of Rs. 30,000/- with the Insurance Company. In June, 1975 goods of the value of Rupees two lacs were hypothecated with the Bank for which the firm had already been extended an advance of Rs. 1,50,000/-, As the value of the goods hypothecated had increased the complainant wrote to the Bank for getting fresh insurance in respect of the goods and machineries hypothecated with the Bank. Accused No. 5, R.K. Prasad (petitioner No. 5) represented himself as Agent of the Company and offered to insure the goods on behalf of the Insurance Company against fire, riot, strike, flood, house breaking, theft etc. On or about the 24th of June, 1975 petitioner No. 5 brought the Insurance Company''s cover-note-cum-bill No. A1353 (450B) dated 16-6-1975 which related to the earlier insurance of the goods. He prepared a draft for the proposal and gave it to the Manager, State Bank of India. The Manager of the Bank Mr. C. Prasad copied out that draft on a letter head of the Bank and handed it over to petitioner No. 5 on the very same day. The letter of the Bank addressed to the Insurance Company dated 24-6-1975 was annexed to the complaint as annexure "1". It shows a request by the Bank to the Insurance Company to (i) increase the limit of Insurance cover from Rs. 30,000/- to Rs. 1,50,000/- and (ii) the Policy to cover damage against fire, riot, srike, flood, burglary, house breaking and theft. The Insurance Company issued Cover Note dated 5-7-1976 in response to the letter of 24-6-1975. That letter was annexed as annexure "2" to the complaint. According to the complainant, annexure "2" represented a completed insurance contract whereby the Insurance Company undertook to insure the goods of the complainant against damage by flood, besides other causes. The firm of the complainant paid Rs, 2,862/- as premium for the enhanced risk cover. According to the complainant, in terms of annexure "2"to the complaint, a policy for Rs. 1,50,000/- should have been prepared by the Insurance Company immediately, but that was not done fraudulently. On 23-8-1975 Dinapur was visited by serious devastating flood causing loss to the hypothecated goods to the tune of Rs. 1,70,000/-. On 29-8-1975 Mr. C. Prasad Manager of the Bank wrote to the Insurance Company that the complainant''s firm had sustained heavy loss on account of the floods. This letter was a claim for compensation. Thereafter, according to the complainant, the claim approved by the Company officials was formally submitted to accused No. 4, J.N. Das. who was the Branch Manager at Patna. Surveyors were deputed by the Insurance Company to assess the amount of loss to the complainant''s firm caused by the flood. On 12-9-1975, it is alleged, Mr. Fatakia, accredited Surveyor of the Insurance Company visited the complainant''s firm along with petitioners 4 and 5 in presence of the Bank Manager, Mr. G. Prasad. According to the complainant the Divisional Manager, petitioner No. 3, the Investigating Officer of the Company R.K. Prasad, petitioner No. 5 and M.K. Fatakia, Surveyor of M/s. Mehta Pademsey (P.) Ltd were fully convinced about the damages of loss to the complainant''s firm by flood, but the Surveyor did not prepare any report on 12-9-1975. He asked the complainant to see him at Republic Hotel, Paha. When the complainant met accused M.K. Fatakia in the hotel he demanded a sum of Rs. 10,000/- as illegal gratification for getting the claim passed. To cut matter short, the complainant refused to comply. The complainant alleged that Mr. Fatakia told him that the sum being asked for by him was not for him alone, but that it was to be shared by Divisional Manager and petitioner No. 2, Manager, Regional Office of the Insurance Company. On the complainant''s expressing helplessness to pay the sum demanded, accused Fatakia also expressed helplessness to oblige the complainant. Thereafter, series of letters followed, written by the complainant, but all the accused kept completely silent. The complainant met petitioners 1 and 2 and one S.K. Mukherjee but instead of assisting the complainant, they asked him to pay what Fatakia was asking as without his report the claim could not be passed. Subsequently one A.R. Mukherjee (accused No. 7) Investigator of the Insurance Company also visited the complainant''s firm. Mr. Mukherjee while conceding the claim unofficialy demanded a sum of Rs. 20,000/-. On the complainant''s declining to oblige A.R. Mukherjee, the latter declined to oblige the complainant. Mr. Mukherjee also threatened the complainant to put the matter in the hands of Central Bureau of Investigation (hereinafter referred to as ''the C.B.I.) for the complainant''s prosecution. The matter was, in fact, placed in the hands of the C.B.I., who investigated the complainant''s claim. In course of investigation by the C.B.I the Insurance Company took up the attitude that the Insurance Policy did not cover risk against damages on account of flood. According to the complainant this was a false defence which showed that the accused had a dishonest intention not to pay the claim on account of damage by flood from the very inception of the acceptance of the proposal. On 22-4-1977 the complainant was informed by the State Bank of India, Dinapur that the former''s claim had been turned down by the Insurance Company. On the basis of the above facts a complaint was filed on 3-6-1977 by the opposite party Basant Kumar Sinha in the capacity of Managing Partner of Golden Enterprises. It was prayed in the complaint that the accused (petitioners) be summoned and put on trial for having commited offences under Sections 420/406/465/162/384/511 and 1203 of the Indian Penal Code. It is relevant here to state that besides the petitioners M.K. Fatakia, Surveyor, M/s. Mehta Pademsey (P.) Ltd., Calcutta and A.R. Mukherjee. M/s. Commercial Intelligence and Investigation Company, Calcutta were made accused Nos. 6 and 7 in the complaint.

4. The complainant was examined on solemn affirmation the day the complaint was filed i.e. 3-6-1977. The issuance of processes was postponed and the complainant was asked to produce his witnesses. Four witnesses were examined on behalf of the complainant. The learned Magistrate thereafter issued processes to answer the allegation of commission of offences in terms of Section 420/120-B of the Indian Penal Code. The petitioners being aggrieved by the order of the learned Magistrate issuing processes against them have moved this court for

setting aside the order of the learned Magistrate as stated earlier. Accused M.K. Fatakia and A.R. Mukherjee are not parties to this application.

5. Mr. B.K. Banerjee appeared on behalf of petitioners 1 and 3 and Mr. K.P. Verma No. 1 on behalf of petitioners 4 and 5. It was submitted on behalf of the petitioners that the complaint ex-facie does not disclose any offence u/s 420 of the Indian Penal Code much less of conspiracy to cheat in terms of Section 420/120B of the Indian Penal Code. It was contended on their behalf that the petitioners were officers of the Insurance Company, and had done everything in discharge of their official duty in good faith and, therefore, being public servants their prosecution without the sanction of the appointing authority was barred in terms of Section 38 of the General Insurance Business (Nationalisation) Act, 1972 (hereinafter referred to as ''the Insurance Act, 1972'') as well as Section 197 of the Code of Criminal Procedure. Learned counsel for the opposite party, on the other hand contended that commission of criminal breach of trust was not part of official duty and, therefore, no sanction was required for prosecuting the petitioners.

6. Before proceeding to consider the contentions urged on behalf of the petitioners, it will be relevant to state the relevance of M.K. Fatakia and A.R. Mukherjee vis-a-vis the Insurance Company in the whole affair. Both of them are employees or are associated with independent firms working as Surveyor and Commercial Intelligence Investigator. They undertake survey and intelligence work independently, for different parties and are not employees of the Insurance Company. Their status is independent of the Insurance Company.

7. The position of petitioner No. 1, K.P. Modi and of M.M. Chakrabarty, petitioner No. 2 is different from those of the other three petitioners in the sense that they are posted at Calcutta and their field of activity is much larger than of other petitioners. Petitioner No. 1 is the Chairman-cum-managing Director and thus his field of activity covers the entire country. Petitioner No. 2 is Assistant General Manager stationed at Calcutta. Thus he is also associated with the Head Office land is not concerned with the day to day operation of the Company at Patna. Petitioners 1 and 2 are not alleged to have played any part in providing any Insurance cover to the hypothecated goods of the complainant. The only allegation against them is that when the complainant was writing letters pressing his claim these accused to borrow the expression of the complainant in paragraph 35 of the complaint maintained studied silence. In paragraphs 36 and 37 of the complaint it is recited that the complainant met them at Calcutta and told them about the illegal demand of the Surveyor Mr. Fatakia, but they refused to help the complainant and directed him to settle terms with Fatakia without whose report no progress could be made. The two petitioners are alleged to have advised the complainant to behave like a worldly businessman. The substance of the allegation in paragraphs 36 and 37 of the complaint thus amounts to this that when the complainant made grievance of demand of illegal money by the Surveyor, they refused to do anything in the matter. Upon these allegations, it is

alleged that petitioners 1 and 2 were parties to a criminal conspiracy to cheat the complainant and on that footing processes have been issued against them. I have failed to appreciate how the facts alleged in paragraphs 35 to 37 of the complaint can show by any stretch of imagination their complicity in any conspiracy to cheat the complainant. The failure on the part of petitioners 1 and 2 to take any action against Fatakia is certainly no evidence of any conspiracy between Fatakia and petitioners 1 and 2. In these days when corruption is rampant, it is not unusual for high officers to receive complaints of demand of illegal gratification by subordinates or others. The failure to take action on such grievances being made may be bad man management but certainly does not indicate criminal conspiracy between the superior and inferior officers or between an officer and stranger. If that reasoning were to be applied, every high official and Minister in Government would be saddled with being in conspiracy to earn illegal gratification. It would be a sorry day if processes were to be issued on such flimsy and irrelevant allegations. These aspects should have attracted the attention of the learned Magistrate before issuing processes. A court should guard itself against temptation to summon high functionaries merely to get a civil claim paid through a criminal court. A criminal court should not convert itself into a handy tool for satisfaction of a mere civil claim. The anxiety of the complainant of a speedy remedy should not force a Magistrate into issuing uncalled for processes. The processes issued against petitioners 1 and 2 was, therefore, an abuse of the process of the court and, therefore, must be quashed by this court.

8. I shall now take the cases of petitioners 3, 4 and 5. They are officers of the Insurance Company posted at Patna. I shall proceed upon the assumption that the facts in the complaint are true, I have, therefore, not taken notice of any fact alleged by the petitioners. According to the complainant, a demand for flood coverage was asked for and the Insurance Company agreed to it. Thus the goods of the complainant were insured against damage by flood and a valid agreement came into being. In response to the claim of the complainant, a Surveyor of M/s. Mehta Pademsy (P.) Ltd. of Calcutta was asked to survey the damage and submit his report. The surveyor did not support the claim of the complainant and the Insurance Company refused to settle the claim in terms of the Insurance Cover. All these acts were certainly regular normal acts of the Insurance Company and its officers, The question, therefore, arises whether these three petitioners can be prosecuted without the sanction of the appointing authority. It is not disputed that these petitioners are public servants. They are public servants in terms of Section 21 of the Indian Penal Code as well as Section 31 of the Insurance Act, 1972. Section 197 of the Code of Criminal Procedure prohibits the taking of cognizance of any offence in regard to acts alleged to have been committed in discharge of official duty. To the same effect is the provision of Section 38 of the Insurance Act, 1972 which reads as follows : -

38. Protection of action taken in good faith. No suit, prosecution or other legal proceeding shall lie against any officer of the Central Government or officer or

other employee of the Corporation or of the acquiring company for anything which is in good faith done or intended to be done under this Act.

The soliciting or insurance business, the issuance of the insurance policy, the acceptance or rejection of claim are all normal duties of officers of Insurance Company. The acts of these petitioners must, therefore, be held to be acts in discharge of their duties. Therefore, in the absence of requisite sanction an undisputed fact the taking of cognizance and prosecuting these petitioners was void ab inttio. This position was countered by Mr. Chandra Shekhar Prasad Sinha appearing on behalf of the complainant opposite party with his usual vehemence and eloquence, but I regret, I have failed to find any substance in his opposition. It was contended by him that cheating persons assured, was no part of official duty of officers of the Insurance Company. That is so, but the question is from what facts is to be inferred that the Insurance Company or petitioners 3, 4 and 5 representing the Insurance Company at the inception of the contract did not intend to pay. To suggest that they knew at the time of the contract that a serious flood would visit Dinapur would be an exercise in absurdity, Mr. Prasad on behalf of the opposite party contended that the existence of a conspiracy to cheat the complainant came to light when Mr. Fatakia made an illegal demand of Rs. 10,000/-. Then looking backward it was clear that the accused intended to pay only after illegal demand of the Surveyor was satisfied. Thus according to learned Counsel for the opposite party, from the fact of demand of illegal gratification it was obvious that at the inception of the agreement these petitioners knew, firstly, that a disastrous flood would visit Dinapur ; secondly, M/s. Mehta Pademsey (P) Ltd. would be appointed Surveyor ; thirdly, the Surveyor''s representative would demand illegal gratification and fourthly, the complainant would refuse to meet the illegal demand and thereafter the claim would be rejected, with utmost respect to Mr. Prasad I would say that this is making a mountain of a molehill. Mr. Fatakia being a representative of an independent Organisation may have had his own reasons of personal enrichment. It is difficult to conclude that there was a conspiracy to cheat the complainant at the time the insurance agreement was entered into. It would be straining one''s intelligence to spin out a case of cheating from the facts alleged in the complaint. I have no manner of doubt that the complainant instituted the present criminal case against the petitioner to pressurise them into accepting his civil claim. I am unable to find any element of dishonesty in petitioners 3, 4 and 5 in entering into an agreement of flood insurance (upon the assumption that the facts alleged in the complaint are true). The order for issuance of processes against the petitioners was, therefore, clearly illegal and unwarranted and must be set aside.

9. Counsel for the parties submitted at length whether flood coverage was included in the insurance or not. I have refrained from entering into that question for the simple reason that in an application like the present one the facts alleged in the complaint must be taken for granted. On that basis even if all the facts alleged in the complaint are true, no offence of cheating or of conspiracy to cheat is made out against the petitioners. Learned counsel for the opposite party also

submitted that even if the complaint does not make out any offence of cheating or of breach of trust or of conspiracy, it does make out offences under Sections 406, 384 and 164 read with Section 120B of the Indian Penal Code I regret, this ingenious submission can be of no avail to the complainant. All the acts attributed to the petitioners are referable to their official duty. For their prosecution for those offences as well, sanction of the requisite authority was a pre-condition. That not having been obtained, the prosecution of these petitioners is entirely misconceived and without jurisdiction. Further cognizance having been taken only of the offence of cheating and conspiracy to cheat u/s 420/120B of the Indian Penal Code, the question of sustaining the prosecution relating to criminal breach of trust, extortion and abatement of obtaining illegal gratification does not arise.

10. For the reasons, stated above, the issuance of processes against all the petitioners was an abuse of the process of the court. Their prosecution, therefore, must be quashed. The application is accordingly allowed and the order of the learned Sub-divisional Judicial Magistrate dated 15-7-1977 is hereby quashed.

